



# House of Representatives

General Assembly

**File No. 399**

*January Session, 2001*

Substitute House Bill No. 5668

*House of Representatives, April 23, 2001*

The Committee on Public Health reported through REP. EBERLE of the 15th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING NURSING HOME STAFFING LEVELS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-521a of the general statutes is repealed and  
2 the following is substituted in lieu thereof:

3 (a) [On and after July 1, 1992, the] The Department of Public Health  
4 shall, whenever possible, conduct dual inspections of chronic and  
5 convalescent nursing homes or rest homes with nursing supervision  
6 when an inspection of any such [a] facility is necessary for the purpose  
7 of the facility's maintaining state licensure and certification for  
8 participation in the Title XIX Medicaid program or the Title XVIII  
9 Medicare program, provided such dual inspections shall be conducted  
10 in not less than [fifty per cent of such facilities. On and after January 1,  
11 1993, the department shall conduct such dual inspections in not less  
12 than] seventy per cent of such facilities.

13 (b) Prior to any inspection of a chronic and convalescent nursing

14 home or a rest home with nursing supervision conducted under  
15 subsection (a) of this section, the department shall calculate the annual  
16 number of working hours for all registered nurses, licensed practical  
17 nurses and nurse's aides staffing such facility and the total resident  
18 days for such facility based on the most recent report to the  
19 Commissioner of Social Services pursuant to section 17b-340. The  
20 department shall use such information to calculate an average daily  
21 staff-to-resident ratio for such facility. The department shall compare  
22 such ratio to the actual nursing staff levels of such facility during such  
23 inspection.

24 (c) At the time of any inspection of a chronic and convalescent  
25 nursing home or a rest home with nursing supervision conducted  
26 under subsection (a) of this section, the department shall assess  
27 residents' care needs to ensure that sufficient numbers and levels of  
28 licensed nurses and nurse's aides are provided by such facility to meet  
29 required resident care needs. Such assessment shall be based on the  
30 1995 and 1997 Staff Time Measurement (STM) Studies, published by  
31 the federal Health Care Financing Administration, that determine the  
32 nursing minutes needed to care for each resident as ranked in the  
33 Resource Utilization Group-III, resident classification system, provided  
34 the department shall update the basis of such assessment upon the  
35 publication of any subsequent version of the federal Staff Time  
36 Measurement (STM) Studies or any subsequent reclassification of such  
37 resource utilization group. In making such assessment of residents'  
38 care needs, the department shall use the data results of the last full  
39 resident assessment of such facility as required by the federal Health  
40 Care Financing Administration Minimum Data Set. The department  
41 shall compare the total number of care hours required by the category  
42 scores for such resource utilization group to the amount of care  
43 actually provided by licensed nurses and nurse's aides at such facility.  
44 If such total number of care hours actually provided is less than such  
45 number of care hours required by the Resource Utilization Group-III,  
46 the department shall review the methodology used by such facility to

47 determine the number, experience and qualifications of nursing  
48 personnel necessary to meet residents' care needs.

49 Sec. 2. Section 19a-522 of the general statutes is repealed and the  
50 following is substituted in lieu thereof:

51 [(a) On or before December 1, 1975, the commissioner shall, in  
52 accordance with chapter 54, adopt regulations]

53 (a) The commissioner shall adopt regulations, in accordance with  
54 chapter 54, concerning the health, safety and welfare of patients in  
55 nursing home facilities, classification of violations relating to such  
56 facilities, medical staff qualifications, record-keeping, nursing service,  
57 dietary service, personnel qualifications and general operational  
58 conditions.

59 (b) (1) As used in this subsection, "direct care" means care provided  
60 to residents of a chronic and convalescent nursing home or a rest home  
61 with nursing supervision, including, but not limited to, face-to-face  
62 assessment, administration of medication or treatments, feeding,  
63 bathing, toileting, dressing, lifting and moving such residents, but does  
64 not include food preparation, housekeeping or laundry services,  
65 except when such services are required to meet the needs of any such  
66 resident on an individual or situational basis.

67 (2) The department shall not issue a license to or renew the license  
68 of a chronic and convalescent nursing home or a rest home with  
69 nursing supervision unless such facility employs sufficient nursing  
70 personnel needed to provide continuous twenty-four-hour nursing  
71 care and services to meet the needs of each resident in such facility.

72 (3) Not later than October 1, 2001, each licensed chronic and  
73 convalescent nursing home and each licensed rest home with nursing  
74 supervision shall maintain aggregate licensed nurse and nurse's aide  
75 staffing levels at or above the following standards:

76     (A) Over a twenty-four-hour period, such facility shall provide not  
77     less than 1.66 hours of direct care and services per resident given by  
78     nurse's aides; and

79     (B) Over a twenty-four-hour period, such facility shall provide not  
80     less than 0.7 hours of direct care and services per resident given by  
81     licensed nurses.

82     (4) Not later than October 1, 2002, each licensed chronic and  
83     convalescent nursing home and each licensed rest home with nursing  
84     supervision shall maintain aggregate licensed nurse and nurse's aide  
85     staffing levels at or above the following standards:

86     (A) Over a twenty-four-hour period, such facility shall provide not  
87     less than 2.0 hours of direct care and services per resident given by  
88     nurse's aides; and

89     (B) Over a twenty-four-hour period, such facility shall provide not  
90     less than 0.75 hours of direct care and services per resident given by  
91     licensed nurses.

92     (5) The director of nurses for any such facility with a licensed bed  
93     capacity of sixty-one or greater shall not be included in meeting the  
94     requirements for direct care and services given by licensed nurses  
95     pursuant to subparagraph (B) of subdivision (3) of this subsection and  
96     subparagraph (B) of subdivision (4) of this subsection. Any such  
97     facility with a licensed bed capacity of one hundred twenty-one or  
98     greater shall employ a full-time assistant director of nurses who shall  
99     not be included in meeting the requirements for direct care and  
100    services given by licensed nurses pursuant to subparagraph (B) of  
101    subdivision (3) of this subsection and subparagraph (B) of subdivision  
102    (4) of this subsection.

103    (6) Any licensed chronic and convalescent nursing home or licensed  
104    rest home with nursing supervision that fails to comply with the

105 minimum staffing requirements of subdivisions (3) and (4) of this  
106 subsection on any day shall submit a report to the department,  
107 identifying the day on which and the shift during which such  
108 noncompliance occurred and specifying the reasons for and  
109 circumstances surrounding such noncompliance. The report required  
110 by this subdivision shall be submitted on a quarterly basis. If such  
111 facility fails to submit any report required by this subdivision or  
112 intentionally misrepresents the information contained in any such  
113 report, or if the commissioner determines that there is sufficient  
114 evidence to support a finding that there exists a pattern of  
115 noncompliance by such facility with the minimum staffing  
116 requirements of subdivisions (3) and (4) of this subsection, the  
117 commissioner shall take action against such facility in accordance with,  
118 but not limited to, sections 19a-524 to 19a-528, inclusive.

119 [(b)] (c) Nursing home facilities may not charge the family or estate  
120 of a deceased self-pay patient beyond the date on which such patient  
121 dies. Nursing home facilities shall reimburse the estate of a deceased  
122 self-pay patient within sixty days after the death of such patient, for  
123 any advance payments made by or on behalf of the patient covering  
124 any period beyond the date of death. Interest, in accordance with  
125 subsection (a) of section 37-1, on such reimbursement shall begin to  
126 accrue from the date of such patient's death.

**PH**            *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Significant Cost

**Affected Agencies:** Departments of Social Services, Public Health

**Municipal Impact:** None

**Explanation****State Impact:**

Passage of the bill will result in significant costs to both the Departments of Public Health (DPH) and Social Services (DSS). These costs are associated with increasing mandatory minimum staffing levels for chronic and convalescent nursing homes and rest homes with nursing supervision and monitoring their compliance with these new standards.

**Department of Social Services**

The following table compares the number of direct care hours per day required under current regulation with levels proposed in the bill.

<u>Staff</u>	<u>Current</u>	<u>Proposed</u> <u>10/1/01</u>	<u>Proposed 10/1/02</u> <u>(HCFA Minimum)</u>
Nurses Aides	1.26	1.66	2.0
Licensed Nurses	.64	.70	.75

Total	1.9	2.36	2.75
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Adoption of these new standards will increase Medicaid payments by approximately \$6.9 million in FY 02 and \$13.2 million in FY 03. A corresponding increase in federal financial participation will result.

It should be noted that sHB 6668 (the FY 02-03 Appropriations Act, as favorably reported by the Appropriations Committee) includes \$7 million under the DSS's FY 02 budget to reflect increased Medicaid reimbursement due to adoption of the Health Care Financing Administration (HCFA) minimum staffing levels (2.0 hours per day for nurse aides, .75 hours per day for licensed nurses), effective January 1, 2002. The sum of \$14 million is provided within sHB 6668 to reflect the annualized cost of this rate increase in the second year of the biennium.

### **Department of Public Health**

Requiring the Department of Public Health to calculate annual working hours per resident day for each nursing home prior to inspection and assess resident care needs in the manner set forth in the bill will increase by one day the time needed to conduct a nursing home survey. DPH staff conduct approximately 260 such surveys annually. The agency will also be required to pursue disciplinary actions against non-compliant facilities. FY 02 costs of \$133,975 will be incurred to support these activities. Included in this sum is \$91,479 to support the three-quarter year salaries of two (2) Nurse Consultants and \$6,600 for associated equipment and other expenses. Also included is \$35,896 in associated fringe benefits costs.

In FY 03 and subsequent fiscal years an ongoing cost of \$172,834 will result (\$124,972 for expenses incurred by the department and \$47,862 for associated fringe benefits costs).

No funding has been included under DPH's budget within sHB 6668 (the FY 02 - 03 Appropriations Act, as favorably reported by the Appropriations Committee) to implement these provisions.



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**OLR Bill Analysis**

sHB 5668

***AN ACT CONCERNING NURSING HOME STAFFING LEVELS.*****SUMMARY:**

This bill: (1) increases minimum nursing home staffing levels; (2) requires the Department of Public Health (DPH) to calculate an average daily staff-to-resident ratio for each nursing home and use this information when inspecting the facility; (3) prohibits DPH from licensing or renewing a license of a nursing home that does not meet staffing standards; (4) requires nursing homes to report to DPH when they do not meet staffing requirements; and (5) requires DPH to take action against nursing homes failing to report staffing deficiencies or demonstrating a pattern of noncompliance with the staffing requirements.

EFFECTIVE DATE: October 1, 2001

**DPH NURSING HOME STAFFING CALCULATIONS AND INSPECTIONS*****Calculating Average Staff-Patient Ratios***

The bill requires DPH, before inspecting any chronic and convalescent nursing home (CCNH) or a rest home with nursing supervision (RHN) ("nursing homes"), to calculate the annual number of working hours for all registered nurses (RNs), licensed practical nurses (LPNs), and nurse's aides staffing the facility and the total resident days for the facility based on the most recent cost report the home provided to the Department of Social Services (DSS). DPH must use this information to calculate an average daily staff-to-patient ratio for the facility. DPH must compare that ratio to the facility's actual nursing staffing levels during the inspection.

***Assessing of Patient Care Needs***

When it inspects a nursing home, the bill requires DPH to assess residents' care needs (i.e. their acuity) to ensure that the home is providing sufficient numbers of licensed nurses and nurse's aides. This acuity assessment must be based on 1995 and 1997 Staff Time Management (STM) studies done by the federal Health Care Financing Administration (HCFA). These studies determine the nursing minutes needed to care for each resident as ranked in the Resource Utilization Group-III classification system (RUG-III; see BACKGROUND). DPH must update the assessment based on subsequent versions of the federal STM studies or any subsequent reclassification of the resource utilization group.

In assessing residents' care needs, DPH must use the data from its last full assessment of the facility as required by HCFA's minimum data set (see BACKGROUND). DPH must compare the total number of care hours required by the category scores for the resource utilization group to the amount of care actually provided by licensed nurses and nurse's aides at the facility. DPH must review the methodology the nursing facility used to determine the number, experience, and qualifications of nursing personnel necessary to meet patient needs if the total number of care hours it provided is less than that required by the RUG-III.

## **NURSING HOME STAFFING LEVELS**

### ***Nursing Home Licenses***

The bill prohibits DPH from issuing or renewing a nursing home license unless the facility employs sufficient nursing personnel to provide continuous 24 hour nursing care and services to meet residents' needs. For purposes of staffing levels, the bill defines "direct care" as care provided to residents that includes face-to-face assessment, administration of medication or treatments; and feeding, bathing, toileting, dressing, and lifting and moving residents. It does not include food preparation, housekeeping, or laundry services except when these services are required to meet the needs of a resident on an individual or situational basis.

### ***Staffing Levels***

By October 1, 2001, the bill requires each CCNS and RHNS to maintain the following aggregate licensed nurse and nurse's aide staffing levels:

Over a 24 hour period, the facility must provide at least (1) 1.66 hours of direct care and services per resident given by nurse's aides; and (2) 0.7 hours of care and services per resident given by licensed nurses. (While the bill requires facilities to meet these standards by October 1, 2001, it does not take effect until October 1, 2001.)

By October 1, 2002, the aggregate staffing levels required under the bill are as follows:

Over a 24 hour period, each facility must provide at least (1) 2.0 hours of direct care and services per resident given by nurse's aides and (2) 0.75 hours of care and services given by licensed nurses.

Currently, minimum staffing requirements for CCNH and RHNS, are set by regulation and are found in the Public Health Code. The actual number of nurse and nurse's aide staff required under the regulations depends on whether the nursing home is a CCNS or a RHNS. Most of the nursing beds in the state are CCNHs. The nurse-to-resident hours per day are less for RHNSs than for CCNHs under the current regulations (see BACKGROUND-Current Minimum Nurse Staff Standards for Nursing Facilities). Under the bill, there is one standard for both types of nursing home.

A comparison of the current and proposed minimum staffing requirements follows:

	<b>NURSE'S AIDES</b>	<b>LICENSED NURSES</b>	<b>TOTAL HOURS</b>
Connecticut Regulations* (§19-13D8t)	1.26 (1 hour 16 min.)	.64 (38 minutes)	1.9 (1 hr. 54 min.)
Bill (sHB 5668)	1.66 (1 hr. 40 min.)	.7 (42 min.)	2.36 (2 hr. 22 min.)
- By October 1, 2001	2.0 (2 hrs.)	.75 (45 min.)	2.75 (2 hr. 45 min.)

- By October 1, 2002			min.)
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\* for CCNHs

### ***Directors and Assistant Directors of Nurses***

Under the bill, the director of nurses for a nursing facility with a licensed bed capacity of 61 or more must not be included when calculating whether the facility meets the licensed nursing staff requirements. Also, the bill requires a facility with a capacity of 121 or more licensed beds to employ a full-time assistant director of nurses who must not be included when calculating whether the facility meets the licensed nursing staff requirements.

### ***Failure to Comply With Staffing Requirements***

Nursing homes failing to comply with the minimum staffing requirements on any day must report quarterly to DPH, identify the day and shift during which there was noncompliance, and give the reasons and circumstances for it. The bill requires DPH to take action against the facility if it fails to report, intentionally misrepresents the information in the report, or if DPH determines there is sufficient evidence to support a finding that there is a pattern of noncompliance concerning the staffing requirements. Such actions can include citations and civil penalties.

## **BACKGROUND**

### ***Minimum Data Set (MDS) and RUG-III***

Federal law requires nursing homes to conduct a comprehensive assessment of each resident's functional capacity. Facilities use a standardized resident assessment instrument, mandated by HCFA, which includes three components--the minimum data set (MDS), resident assessment protocols, and utilization guidelines.

The MDS is a core set of screening and assessment elements that forms the foundation of comprehensive assessments for all nursing home residents. It includes common definitions and coding categories. The

MDS places each nursing home resident into one of 44 Resource Utilization Groups, Version III (RUG III). The bases for the RUG groupings are three staff-time measurement studies commissioned by HCFA in the 1990s. The purpose of the studies was to define the relationship between resident clinical characteristics and nursing staff (nurse and nurse's aide) time consumed for each resident.

***Current Connecticut Minimum Nurse Staffing Standards for Nursing Homes***

Direct Care Personnel	CCHN		RHNS	
	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.
Licensed Nursing Personnel	.47 hpp (28 min.)	.17 hpp (10 min.)	.23 hpp (14 min.)	.08 hpp (5 min.)
Total Nurses and Nurse Aide Personnel	1.40 hpp (1 hr. 24 min.)	.50 hpp (30 min.)	.70 hpp (42 min.)	.17 hpp (10 min.)
*hpp: hours per patient Source: CT Regulations Section 19-13D8t.				

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 25      Nay 0